



# COMMONWEALTH of VIRGINIA

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## *Department of Alcoholic Beverage Control*

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CHIEF OPERATING OFFICER/SECRETARY TO THE BOARD  
W. CURTIS COLEBURN, III

### CIRCULAR LETTER 06-02

TO: All Virginia Farm Winery Licensees

DATE: June 29, 2006

A handwritten signature in cursive script, likely belonging to Francis J. Monahan.

FROM: Francis J. Monahan  
Director  
Bureau of Law Enforcement

SUBJECT: **ISSUES AND CLARIFICATION FOR FARM WINERY INDUSTRY**

As most of you are aware, the Federal Court has ruled in the case of Brooks v. Danielsen that portions of the Virginia statutes dealing with the Virginia farm winery laws were unconstitutional. As a result of this ruling, farm wineries are no longer permitted to wholesale (self-distribute) their products to retailers. Farm wineries desiring to sell their wine to ABC licensed retailers have had to find a Virginia wine wholesaler to do so on their behalf. We trust that all of you have discontinued self-distribution and have designated wholesalers to distribute your brands to retail.

With that above referenced change there will be other minor changes in processes. First, although you may appoint more than one wholesaler, you may not appoint more than one wholesaler within a specified sales area. Please do not forget that the Attachment A and B forms must be submitted for your brands to be distributed by those wholesalers you appoint. Our staff in Tax Management have asked that we remind you that they are more than happy to assist you with these filings or any other questions you may have regarding the designation process. They can be reached at 804.213.4555. Additionally, we have attached copies of the Attachment A and B forms and they may also be found online at:

<http://www.abc.virginia.gov/enforce/forms/enfforms.htm>

As a result of the limitations placed on the privileges of farm winery licenses the department has had to reevaluate the monthly reporting requirements that each winery must complete for Tax Management. Rather than completely overhauling the current process of remitting the monthly excise tax, we will need you to continue with the current method of reporting those taxes. For clarity, please be guided by the following: wines that are reported by Farm Wineries on the monthly Wholesalers Summary of Wine Sales and Taxes Report shall ONLY be those wines that have been transferred to the Farm Winery retail

operation. A purchase order must be executed and submitted to Tax Management when the wines are transferred to your retail side. Any wines that are sold to a wholesaler for distribution to other retail outlets must be sold on a purchase order and those purchase orders must be submitted to Tax Management by the wholesaler. Again, please do not hesitate to contact the Tax Management staff if you need assistance with this process.

Additionally, you are no longer permitted to personally deliver wine sold for off premises consumption using your retail privileges. However, this does not prohibit you from continuing to sell wine at your winery for off premises consumption, or selling wine for off premises consumption at approved remote locations. It simply does not allow you or your employees to deliver the wine to the consumer away from the winery or remote location. If you desire to ship wine to consumers via common carrier, you may apply for a shipper's license.

Another key point of the Court ruling was that the practice by the Department of ABC of only selling Farm Wines in ABC stores is unconstitutional. The General Assembly did not change the law to allow for all wines to be sold in ABC stores, therefore, we will not be selling Virginia wines in ABC stores at this time. However, the case is on appeal, and if ABC's appeal is successful on this point we may resume Virginia wine sales.

Finally, Effective July 1, 2006 an additional change in Virginia law will occur in relation to this case. In order to accommodate smaller wholesale wine businesses, a new wholesale wine license tax category was created for licensees selling 30,000 gallons of wine or less per year. The license tax for this new category will be \$185.00 per year. Although you as a farm winery licensee are not eligible to apply for a wholesale license, the hope is that this reduced license tax category will encourage others who may wish to start a wholesale wine business. An applicant may apply for this license prior to July 1, 2006, but a license may not be issued for the new license tax category prior to July 1, 2006.

We are available to assist you with any questions you may have in this new process. Please contact your Compliance Agent, or if you cannot get in contact with your Agent, please contact Mary McDermott at (804) 213-4573 for assistance.

## IMPORTER DESIGNATION AND AUTHORIZATION FORM:

- I. \_\_\_\_\_ (Name of Brand Owner) is the lawful owner of the brand(s) of beer and/or wine listed in paragraph II and, as the brand owner, hereby authorizes:

Name of Applicant/Licensee \_\_\_\_\_

Street Address of Applicant/Licensee \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Virginia Importer's Number \_\_\_\_\_

to sell and deliver or ship the same brands of wine and/or beer into the Commonwealth of Virginia pursuant to, and in compliance with, the relevant statutes and regulations of the Commonwealth, which govern beer or wine importer licenses.

- II. The brands which the applicant named in paragraph I is authorized to sell and deliver or ship into Virginia are as follows.

Name of Brands \_\_\_\_\_  
\_\_\_\_\_

- III. The above named applicant/licensee is hereby designated as the authorized representative of \_\_\_\_\_ (Name of Brand Owner) for the purpose of establishing written agreements, of a definite duration and within the meaning of the Beer Franchise Act, §§4.1-500, et seq., of the code of Virginia and/or the Wine Franchise act, §§4.1-400 et seq., of the Code of Virginia, with each wholesaler licensee of the Virginia Alcoholic Beverage Control Board to whom the above named importer sells any brand of beer or wine listed in paragraph II.

**NOTICE TO BRAND OWNER:** By completing and submitting this form, according to Virginia law, the designated Importer will be authorized to enter into agreements for territory assignments with Virginia licensed wholesalers on your behalf. All territory assignments made by your designated Importer are submitted to the Virginia Department of ABC on an Attachment B form and are binding.

- IV. Please check the appropriate statement, below:

- ☐ This is an original authorization from the undersigned brand owner for the brands identified in paragraph II.
- ☐ This is an amendment to an original authorization, adding or deleting brands, which the above named applicant or importer is authorized by the undersigned brand owner to import into Virginia.

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Brand Owner

\_\_\_\_\_  
Signature of Person Executing Form and Title

## DESIGNATION OF AUTHORIZED DISTRIBUTOR FORM

The undersigned, which is applying for issuance or renewal of an importer's license to sell and deliver or ship the brands of beer and/or wine listed in Paragraph 2 of the attached Importer Designation and Authorization Form Attachment A, hereby files with the Virginia Alcoholic Beverage Control Board this list of wholesaler licensees which are authorized by the undersigned, as the authorized representative of \_\_\_\_\_ (Name of Brand Owner), to distribute such brands within the Commonwealth of Virginia.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Applicant for Importer's Licensee/or Importer Licensee

\_\_\_\_\_  
Signature of Person Executing Form and Title of Position

Name of Designated Distributor      License  
And Distributor License #      Number

Address of Designated Distributor

Designated Territory or Primary Area of Responsibility

1) \_\_\_\_\_

2) \_\_\_\_\_

3) \_\_\_\_\_

4) \_\_\_\_\_

5) \_\_\_\_\_

6) \_\_\_\_\_

7) \_\_\_\_\_

\_\_\_\_\_  
(Use Supplemental Sheet If Necessary)